

**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER**

**IN THE MATTER OF:**

City of Minburn  
Waste Water Facility Upgrade Plan

**ADMINISTRATIVE CONSENT  
ORDER  
2008-WW-33**

**TO:**

City of Minburn  
c/o Richard Buscher, City Clerk  
315 Baker St., PO Box 213  
Minburn, IA 50167-0213

**I. SUMMARY**

This administrative consent order (Order) between the Iowa Department of Natural Resources (Department) and the City of Minburn (City) requires the City to comply with the effluent limitation of its National Pollution Discharge Elimination System Permit (NPDES). In order to comply, the City agrees to prepare a preliminary engineering report for improvements to its waste water treatment facility (WWTF) because the current system is unable to store waste water for 180 days as required by its permit. This Order provides a time table for obtaining the engineering report and for the completion of the new wastewater treatment facility. The City also agrees to pay an administrative penalty of \$800. See Sections V and VI for more details.

Any questions regarding this Order should be directed to:

**Relating to technical requirements:**

Charles Furrey  
IDNR Field Office #5  
401 S. W. 7<sup>th</sup>, Suite 1  
Des Moines, Iowa 50319-4611  
Ph: 515/725-0334

**Relating to legal requirements:**

Tamara Mullen, Attorney  
Iowa Department of Natural Resources  
Henry A. Wallace Building  
Des Moines, Iowa 50319-0034  
Ph: 515/281-8934

## **I. JURISDICTION**

The parties agree that this Order is issued pursuant to Iowa Code section 455B.175(1) which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part I, and the rules promulgated or permits issued thereto; and Iowa Code section 455.109 and 567 Iowa Administrative Code (I.A.C) chapter 10 (455B), which authorize the Director to assess administrative penalties.

## **III. STATEMENT OF FACTS**

The parties agree to the following statement of facts:

1. The City owns and operates a WWTF located in Minburn, IA. This facility consists of a 2-cell facultative lagoon system. It is designated as Public Water Supply ID # 2547085.
2. The city operates its WWTF pursuant to NPDES permit # 2547001. This permit provides: "Continuous discharge from this facility is prohibited. This facility must be operated using a storage/drawdown mode of operating. Wastewater must be stored from approximately 180 days after which time the water level is to be lowered to make room for the next storage period....Lagoon drawdown shall occur during these periods except in emergency situations."
3. On Aug. 15, 2003, Field Office 5 issued the City a Notice of Violation (NOV) for noncompliance with its NPDES permit for prohibited discharge under 567 I.A.C. 64.7(5)"a" and improper operation and maintenance under 567 I.A.C. 64.7(5)"f."
4. On February 15, 2007, the Department of Natural resources again issued the City a second NOV notified the City for of a violation for another prohibited discharge under 567 I.A.C. 64.7(5)"a" and for continued improper operation and maintenance under 567 I.A.C. 64.7(5)"f".
5. On April 9, 2007, Field Office 5 personnel DNR representatives Charles Furrey and Jim Stricker attended a City Council meeting on Monday evening on April 9, 2007 and informed the City that it was required to submit is necessary to obtain the services of a consulting engineer to prepare a preliminary engineering report, which would outlines the improvements needed to enable its wastewater system to operate in accordance with the NPDES permit. This report was required to contain a schedule for achieving compliance with the terms and conditions of the NPDES permit; namely to operate as a controlled discharge lagoon with 180 day storage and with only spring and fall discharges. This report was due no later than October 2007.
6. By January 2008, the Department had not received the preliminary engineering report. The Department granted an extension in a letter dated January 8, 2008, with a new due

date of April 8, 2008. The City was informed that its failure to comply would justify a referral to the Department's Legal Services Bureau for enforcement action.

7. The City failed to submit the report by April 8, 2008.
8. The City informed the Department via a telephone conversation on April 9, 2008, that the City Council had not yet hired an engineer to assist them in preparing the report. The City Clerk said he hoped that the matter would be addressed when the full council attended the next meeting.
9. As such, this matter was referred to the Legal Services Bureau on April 17, 2008.

#### **IV. CONCLUSIONS OF LAW**

The parties hereby agree that the following conclusions of law are applicable to this matter:

1. Iowa Code section 455B.173 authorizes and requires the Environmental Protection Commission (commission) to promulgate rules relating to the operation of waste disposal systems. The commission has done so at 567 I.A.C. chapters 60-64.
2. 567 I.A.C. 64.3(1) prohibits the operation of a waste disposal system without or contrary to the terms of a NPDES permit.
3. 567 I.A.C. 64.7(5)"a" prohibits the discharge of any pollutant more frequently or at a level in excess of that authorized by the NPDES permit.
4. 567 IAC 64.7(5)"f" provides that the facility shall be operated so as to achieve compliance with the terms and conditions of the NPDES permit.
5. This facility's NPDES permit prohibits the city from continuously discharging wastewater. The treatment plant must be operated using a storage/drawdown mode of operating. Wastewater must be stored for approximately 180 days after which time the water level is to be lowered to make room for the next storage period. Lagoon drawdown should only occur in the spring and fall when the flow in the receiving stream is not at its minimum.

#### **V. ORDER**

THEREFORE, the Department hereby orders and the City agrees to the following:

1. The City shall pay a penalty of \$800 to the order of the Iowa Department of Natural Resources within 30 days issuance of this Order.
2. By December 1, 2008, the City shall retain an Iowa-certified professional engineer to assist them in preparing a preliminary engineering report outlining the necessary

upgrades and repairs to its WWTF. The report shall contain a schedule with interim milestone dates that will ensure the facility is improved in a manner which ensures compliance the effluent limitations in the City's NPDES permit

3. By December 1, 2008, the City is required to submit a wastewater collection facility plan to the Department. The facility plan shall be agreed upon and signed by the Department and the City. The facility plan shall contain a schedule for each of the following events:
  - a. Submission of plans and specifications with an application for a construction permit;
  - b. Beginning of any improvements and/or construction;
  - c. Completion of any improvements and/or construction;
  - d. Compliance with NPDES permit limitations and conditions.
4. By September 1, 2011 the City shall complete all improvements and/or construction to the wastewater collection facility.
5. The Department reserves the right to assess additional penalties should the above-listed milestones not be met due to willful neglect on behalf of the City. Failure to meet a deadline due to conditions or situations beyond the City's control shall not be grounds for additional enforcement activity by the Department. Additionally, should the City believe it shall miss a deadline, it must provide the Department with 30 days notice.

## **VI. PENALTY**

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties in Iowa District Court of up to \$5,000 per day of violation for the violations involved in this matter. More serious criminal sanctions are also available pursuant to that provision.
2. Iowa Code sections 455B.109 authorize the commission to establish by rule a schedule of civil penalties up to \$10,000 which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties. See 567 I.A.C. 10. Pursuant to this rule, the Department has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an Order with a penalty.

### **I. Economic Benefit:**

The City's failure to adequately implement, inspect and maintain pollution prevention measures at its WWTF have saved time and operational costs. As such, \$200 is assessed for this factor.

### **II. Gravity of the Violations:**

The wastewater treatment plant cannot adequately store wastewater for 180 days to enable it to discharge during the acceptable spring and fall periods. It has discharged frequently throughout the year. As a result, the facility may be discharging high levels of bacteria and ammonia nitrogen which could impact aquatic life in the stream. Accordingly, \$200 is assessed for this factor.

### III. Culpability:


It is undeniable that the City is aware of the terms of its NPDES permit. Moreover, the City has been repeatedly informed via letters and phone calls of what it needs to do to come into compliance. The Department has already provided a one-time extension. Therefore, the City's failure to comply with the law is willful. As such, \$400 is assessed for this factor.

### VII. WAIVER OF APPEAL RIGHTS

Iowa Code section 455B.175, and 561 I.A.C. 7.5(1), as adopted by reference by 567 I.A.C. chapter 7, authorize a written notice of appeal to the commission. This Order is entered into knowingly by and with the consent of the City. By signing this Order all rights to appeal this Order are waived.

### VIII. NONCOMPLIANCE

Compliance with Section V of this Order constitutes full satisfaction of all requirements pertaining to the violations described in this Order. Failure to comply with this Order may result in the imposition of additional administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191.

  
Richard Buscher, City Clerk  
City of Minburn, IA

Dated this 10 day of November, 2008

  
RICHARD A. LEOPOLD, DIRECTOR  
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 15 day of Dec., 2008

City of Minburn: Field Office 5; Charles Furrey; I.B.2.C. & D; I.C.1.